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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/504,817

03/01/2005

Nobuyuki Takakuwa

8048-1054

9186

466 7590 11/17/2008

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EXAMINER

HASAN, SYED Y

ART UNIT

PAPER NUMBER

2621

MAIL DATE

DELIVERY MODE

11/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/504,817	Applicant(s) TAKAKUWA ET AL.	
	Examiner SYED Y. HASAN	Art Unit 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25 - 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 - 47 is/are allowed.
- 6) ☒ Claim(s) 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/17/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The terminal disclaimer filed on 7/21/2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of application 10/504,745 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent thereof, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV reads as follows:

Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in Sec. 101.

... a signal does not fall within one of the four statutory classes of Sec. 101

... signal claims are ineligible for patent protection because they do not fall within any of the four statutory classes of Sec. 101.

Claim 48 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows.

Claim 48 define a “data structure” with descriptive material.

A “data structure” embodying functional descriptive material is neither a process nor a product (i. e. a tangible “thing”) and therefore does not fall into one of the four statutory class of 101. Rather a “data structure” is a form of energy, in the absence of any physical structure or a tangible material.

Because the full scope of the claim as properly read in light of the disclosure encompasses non- statutory subject matter, the claim as a whole is non-statutory. The examiner suggests amending the claim to include the disclosed tangible readable computer readable media, while at the same time excluding the intangible media such as software, signals, carrier waves, etc. Any amendment to the claim should be commensurate with its corresponding disclosure.

Allowable Subject Matter

3. Claims 25 - 47 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter:

The present invention of claims 25 - 47 is directed to an information recording apparatus for multiplexing and recording an entire stream including a plurality of portion streams, each of which comprises content information constructing a series of contents,

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onto an information recording medium by a unit of packet, which is a physically accessible unit

Independent claims 25, 34, 35, 36, 39, 40, 44, 45, 46 and 47 identify the unique distinct feature “discontinuity information for indicating a discontinuous condition of a serial number of the plurality of packets corresponding to a recording order upon multiplexing-and-recording is given to said related group definition information commonly with respect to a plurality of related groups, the discontinuous condition being generated by a lack of the packet upon editing after the multiplexing-and-recording, with respect to the serial number.”

The closest prior art, Kato et al (US 6950604) discloses discontinuity information is unified and written with respect to the plurality of related groups (col 5, lines 51 – 58) however Kato does not disclose indicating a discontinuous condition with respect to a serial number nor corresponding to recording order upon multiplexing.

Hence claims 25, 34, 35, 36, 39, 40, 44, 45, 46 and 47 are allowed.

Therefore all dependent claims are also allowed.

Therefore claims 25 - 47 are allowed over prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Syed Y. Hasan whose telephone number is 571-270-1082. The examiner can normally be reached on 9/8/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. Y. H./
10/29/2008

/Thai Tran/
Supervisory Patent Examiner, Art Unit 2621